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JOHN F. DAVIS,

(2367)

Supreme Court of the United States

October Term, 1965

Nos. 847, 877

NICHOLAS DEB. KATZENBACH, Attorney General of the United States, *et al.*,

Appellants,

against

JOHN P. MORGAN and CHRISTINE MORGAN,

Appellees.

NEW YORK CITY BOARD OF ELECTIONS, etc.,

Appellant,

against

JOHN P. and CHRISTINE MORGAN,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MOTION OF LOUIS J. LEFKOWITZ, AS ATTORNEY GENERAL OF NEW YORK, *AMICUS CURIAE* IN SUPPORT OF APPELLEES, FOR LEAVE TO ARGUE ORALLY.

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BATAVIA, N. Y.

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The Attorney General of New York hereby respectfully moves this Court for leave to present 30 minutes of oral argument, as *amicus curiae* in support of appellees in the above entitled appeals. A brief *amicus curiae* has been prepared and will be submitted before April 10, 1966.

The Attorney General of New York has a statutory duty to defend the constitutionality of statutes of the State. At issue on these appeals is not only the validity of § 4(e) of the Voting Rights Act of 1965 but also the validity, under the Constitution of the United States, of the provisions of

the New York Constitution and statutes which require voters to be literate in the English language.

Movant is a party to another case involving an identical question of law (*United States* v. *County Board of Election of Monroe County,* 248 F. Supp. 316 [1965]). That case was decided adversely to the defendants there by a three-Judge District Court in the Western District of New York. A direct appeal to this Court was dismissed for want of jurisdiction on March 21, 1966. Appeal is still pending, however, in the United States Court of Appeals for the Second Circuit.

That appeal cannot, however, in the normal course of events reach this Court before argument and decision of the instant appeals. Since the questions of law in these cases and the Monroe County case are identical, it is anticipated that further appeals in the latter case will be obviated by this Court's decision in the instant appeals.

The Attorney General of New York, therefore, respectfully requests the opportunity to be heard by this Court in oral argument as *amicus curiae* in the instant appeals in order to present the arguments of the State of New York in support of its own constitution and statutes and its arguments against the validity of § 4(e) of the Voting Rights Act of 1965.

Movant does not believe that the argument on behalf of appellees will fully present all the issues involved in the case before the Court. Appellees have a personal interest in the litigation and in the protection of their own votes. However, the Attorney General of New York has an interest which is statewide in scope. It involves the application of both the State statutory and constitutional provisions and of § 4(e) on a statewide basis and directly

affects the powers of the State to determine the qualifications of its voters and to enforce its Election Law. The Attorney General submits that this wider viewpoint and the interests of the State as a whole should be presented to the Court and will not be presented by the argument on behalf of the individual litigants.

Although the State is a party in *Cardona* v. *Power* (No. 673, this Term), that case arose prior to the enactment of § 4(e) and does not involve any question as to the validity of the Federal Act. Since that case has been placed on the summary calendar, the time permitted for argument therein could not be sufficient to allow presentation of the State's interests and arguments as to the validity of § 4(e).

It is, therefore, respectfully requested that the Attorney General of New York, as *amicus curiae* be permitted to present 30 minutes of oral argument in order to place before the Court the interests of the State in the area of the determination of voter qualifications.

Dated: March 24, 1966.

Respectfully submitted,

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